IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
CIVIL APPLICATION NO.2226 OF 2006
IN
FIRST APPEAL NO.968 OF 2006

The New India Assurance Co.Ltd. ...Applicant

vs.

1.Sahebrao @ Rohidas P. Badhale
2.Sou.Bijali Sahebrao Badhale
3.Shivaji Vitthal Pawase
4.Subhas Dharmaji Kaokhe ...Respondents

Ms M.R.Behere for the Applicant

CORAM: A.S.OKA, J.
DATED: MAY 2, 2006.

P.C.:

1. Heard learned Advocate for the Applicant. The challenge in this Appeal preferred by the Applicant-New India Assurance Company Ltd. is to the Judgment and Award dated 10th November 2005 passed by the learned Member of the Motor Accident Claims Tribunal. By the impugned Judgment, the claim petition filed by the Respondent Nos.1 and 2 was allowed and compensation of Rs.1,50,000/- along with the interest at the rate of 8% p.a. was granted. There are two vehicles involved in the accident. One is the rickshaw and other is the truck. Admittedly, both the vehicles were insured with the Appellant and that is the reason the Appellant has been impleaded as the opponent Nos.2 and 4 in the claim Petition.

2. So far as the present Appeal is concerned, it is filed by the Appellant only in its capacity as the insurer of rickshaw. The ground in the Appeal is that the rickshaw was carrying more passengers than what was permitted and therefore there was a breach of the terms and conditions of the policy of insurance. The finding of the tribunal is that the Appellant has not discharged the burden of proving the breach.

3. Even if the Appellant-Company succeeds in the Appeal, the Award against the owner of the rickshaw will remain. Therefore, in the event of success of the Appellant, the amount can always be recovered from the insured. There is one more reason for not granting the stay. The operative part of the impugned Award shows that the opponents in the Claim Petition have been directed to pay compensation jointly and severally. The present Appellant has also been impleaded in the application as the insurer of the truck which was involved in the accident. There is no Appeal preferred by the Appellant in its capacity as the insurer of the truck. As per the operative part of the impugned Award, the liability of all the Opponents in the Claim Petition is joint and several. Even if the Appellant succeeds in the Appeal, the Award against it in its capacity as the insurer of the truck will remain. Hence, no case is made out for grant of stay. It is made clear that the payment of the compensation by the Appellant to the original claimants will be subject to

final outcome of the Appeal. Application is rejected.

Judge.